

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Slater	Team: Team # 4	CCRB Case #: 200902061	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/10/2009 6:30 PM	Location of Incident: East 108th Street between Stanley and Farragut Road	Precinct: 69	18 Mo. SOL 8/10/2010	EO SOL 8/10/2010	
Date/Time CV Reported Wed, 02/11/2009 9:00 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/11/2009 9:00 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Eric Delman	01832	922228	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Philogene Breville	03121	940974	069 PCT
2. POM Sydney Dellimore	05245	940073	069 PCT
3. POF Priscilla Goncalves	10665	941827	069 PCT
4. POM Christophe Denny	02995	936468	069 PCT
5. POF Jenifer Mcdonald	08259	938984	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Eric Delman	Abuse: Sgt. Eric Delman stopped § 87(2)(b)	
B.SGT Eric Delman	Abuse: Sgt. Eric Delman frisked § 87(2)(b)	
C.SGT Eric Delman	Abuse: Sgt. Eric Delman searched § 87(2)(b)	
D.SGT Eric Delman	Abuse: Sgt. Eric Delman stopped § 87(2)(b)	
E.SGT Eric Delman	Abuse: Sgt. Eric Delman frisked § 87(2)(b)	
F.SGT Eric Delman	Abuse: Sgt. Eric Delman searched § 87(2)(b)	

### Synopsis

At approximately 7:00 PM on February 10, 2009, § 87(2)(b) walked from § 87(2)(b) towards East 108<sup>th</sup> Street and Farragut Road, and in a parking lot he encountered his friend § 87(2)(b) and § 87(2)(b) shook hands. § 87(2)(b) walked much faster than § 87(2)(b) on East 108<sup>th</sup> Street toward Farragut. PO Christopher Denny and PO Priscilla Goncalves of the 69<sup>th</sup> Precinct were doing observation as part of a SNEU observation, observed the interaction between § 87(2)(b) and § 87(2)(b) and PO Denny made a radio call to the rest of the SNEU team that two males had conducted what appeared to be a drug transaction. Sgt. Eric Delman and PO Philogene Breville stopped § 87(2)(b) (**Allegation A**), frisked him (**Allegation B**), and searched him (**Allegation C**), and did not find anything. Sgt. Delman and PO Breville stopped § 87(2)(b) (**Allegation D**), frisked him (**Allegation E**), and Sgt. Delman searched § 87(2)(b) (**Allegation F**). § 87(2)(b) and § 87(2)(b) were not arrested or issued summonses. Later in the evening § 87(2)(b) filed an IAB complaint accusing Sgt. Delman of stealing his watch, and the watch was returned to him later that night. This allegation was investigated by IAB.

§ 87(2)(g)

During his interview on February 18, 2009, § 87(2)(b) declined to pursue the mediation process § 87(2)(b)

### Summary of Complaint

§ 87(2)(b) filed this complaint by phone with the CCRB on February 11, 2009 (see **Enclosure 5**). His phone statement was consistent with his official statement at the CCRB on February 18, 2009 (see **Enclosure 6**). § 87(2)(b) was § 87(2)(b) old at the time of the incident, and is a 5'9", 165-pound light-skinned Hispanic male.

At approximately 6:30 PM on February 10, 2009, § 87(2)(b) exited his grandmother's apartment at § 87(2)(b), in Brooklyn. He had a Bulova watch in a box in his jacket pocket, which he was carrying because it was broken and he was taking it to be repaired.

As § 87(2)(b) cut through the parking lot of the housing project, Brook Ellen houses, § 87(2)(b) to the bus stop on East 108<sup>th</sup> Street, § 87(2)(b) said hello to a friend of his, § 87(2)(b). In the parking lot, § 87(2)(b) gave § 87(2)(b) a handshake, and had a brief conversation with § 87(2)(b) and § 87(2)(b) did not exchange anything, neither money nor drugs. § 87(2)(b) did not see § 87(2)(b) talk to anybody else. § 87(2)(b) did not know if § 87(2)(b) deals drugs. § 87(2)(b) did not talk to anybody else. § 87(2)(b) walked very fast ahead of him. § 87(2)(b) did not know why § 87(2)(b) walked faster. § 87(2)(b) was on his way to his girlfriend's house.

§ 87(2)(b) reached East 108<sup>th</sup> Street and walked on the street to the bus stop. A marked police car pulled up. In this car was a black female in uniform, identified as PO Jenifer McDonald of the 69<sup>th</sup> Precinct, and a black male officer in uniform, about 5'8", 165, identified as PO Sydney Dellimore of the 69<sup>th</sup> Precinct. There was an unmarked car on the block as well, with two officers, a white male approximately 5'10", about 200 pounds, Sgt. Eric Delman of the 69<sup>th</sup> Precinct, and his partner, a black male approximately 6'1", 200 pounds, identified as PO Philogene Breville of the 69<sup>th</sup> Precinct. § 87(2)(b) had no previous interactions with Sgt. Delman.

PO McDonald told § 87(2)(b) not to move, and to turn around. § 87(2)(b) explained that he had his ID. PO McDonald frisked § 87(2)(b) by patting him down. At about the same time, Sgt. Delman and PO Breville pulled their car up, exited, and stopped § 87(2)(b) approximately 50 feet away on East 108<sup>th</sup> Street, closer to Farragut Road. PO Breville searched § 87(2)(b). § 87(2)(b) knew that these officers had arrested § 87(2)(b).

§ 87(2)(b) before, because they said something to the effect of, “You ain’t got no weed this time?” § 87(2)(b) believed that he had been stopped because of § 87(2)(b) past run-ins with the law. § 87(2)(b) was not arrested.

Sgt. Delman walked over to where § 87(2)(b) was standing and searched him, putting his hands in § 87(2)(b) s pocket, and taking the box of the watch out and looking at it. Other than the watch, the only thing in his pocket was about \$15-\$16, his ID, and some cigarettes. Sgt. Delman found nothing, they checked his ID, and found nothing. § 87(2)(b) was not paying attention to whether Sgt. Delman returned the box of the watch to his pocket.

§ 87(2)(b) told Sgt. Delman that he objected to their ability to randomly stop him. Sgt. Delman said the officers stopped him because of a 911 call. § 87(2)(b) asked to hear the call. Sgt. Delman refused. § 87(2)(b) believed the officers stopped him because they thought § 87(2)(b) and § 87(2)(b) passed each other something illicit.

All the officers returned to their car and began pulling away. § 87(2)(b) realized that the officers did not place the watch back in his pocket. He called 911 to report the missing watch. After filing an IAB complaint at the 69<sup>th</sup> Precinct, § 87(2)(b) received his watch back from Sgt. Delman.

### **Results of Investigation**

#### **Witness Statement**

§ 87(2)(b)

When contacted by the CCRB on March 19, 2009 § 87(2)(b) refused to provide a witness statement. He said that he did not want to participate in a CCRB investigation, and confirmed that neither the CCRB nor the NYPD had coerced him into withdrawing his complaint. A withdrawal letter was sent to § 87(2)(b) on June 2, 2009 (see **Enclosure 16**), and it will be added to the case file upon its receipt. § 87(2)(b) and all of the officers except for PO Denny said that there were no other witnesses. PO Denny said a third individual was at the scene, but said that he was not stopped, and the stop-and-frisk log showed no other individuals stopped at that location.

#### **Map of Location (see Enclosure 4)**

The Mapquest aerial map of the location showed that PO Denny observed § 87(2)(b) and § 87(2)(b) from one block away at East 105<sup>th</sup> Street and Farragut Road.

#### **Officer Identification**

PO Philogene Breville was interviewed because he filled out the stop-and-frisk reports for § 87(2)(b) and § 87(2)(b). The 69<sup>th</sup> Precinct roll call (see **Enclosure 11**) showed that Sgt. Delman was his partner, and that PO Dellimore and PO Denny were also on the SNEU team.

#### **Officer Statements**

*Sgt. Eric Delman (see Enclosure 7)*

Sgt. Eric Delman was interviewed at the CCRB on June 12, 2009. Sgt. Delman is a 5’10”, 180 pound white male who was § 87(2)(b) old at the time of the incident.

On February 10, 2009, Sgt. Delman worked from 2:50 to 11:37 PM. He was assigned as the supervisor of the Street Narcotics Enforcement Unit (SNEU), his driver was PO Breville. Other members of the team included PO MacDonald, PO Denny, PO Goncalves, and PO Dellimore. Sgt. Delman was dressed in uniform, assigned to an unmarked motor vehicle. In his memo book, Sgt. Delman noted at 6:30 PM that he was doing a SNEU operation observing Farragut Road and East 28<sup>th</sup> Street in Brooklyn. At 7:00 PM he

noted two males stopped at East 108<sup>th</sup> and Farragut. At 7:05, a stop-and-frisk report was prepared by PO Breville, and he noted that was in relation to Sprint 13161.

At approximately 6:30 PM on February 10, 2009, there was an observation team, PO Denny and PO Goncalves in an unmarked vehicle observing East 108<sup>th</sup> Street and Farragut. PO Breville was driving Sgt. Delman, and PO Denny and PO MacDonald were in a separate apprehension car. The two apprehension vehicles were about two blocks away from East 108<sup>th</sup> Street and Farragut. At approximately 6:55 PM, the observation team observed two individuals, known to Sgt. Delman as § 87(2)(b) and § 87(2)(b) § 87(2)(b) engage in what appeared to be a narcotics transaction. The observation team put over a detailed description of § 87(2)(b) and § 87(2)(b) of their location, and of what the observation team believed had transpired between them. Sgt. Delman could not remember exactly what the observation team said. He recalled that the team said they had seen § 87(2)(b) and § 87(2)(b) touch hands, and thought that § 87(2)(b) had possibly either sold or given something that was possibly marijuana to § 87(2)(b). Sgt. Delman had not seen § 87(2)(b) before, but his SNEU team had arrested § 87(2)(b) several days before, on January 31, 2009, when he was observed on the rooftop, and charged with § 87(2)(b). PO Denny had been the arresting officer for § 87(2)(b) on January 31, 2009. The previous interaction with § 87(2)(b) was not a factor in Sgt. Delman stopping him, as Sgt. Delman acted exclusively based on the radio transmission from the observation team, which did not note that individual was known to the team. Sgt. Delman did not recall what the physical descriptions of § 87(2)(b) and § 87(2)(b) were, but the descriptions are generally of race, gender, height, clothing, and direction of flight.

Within one minute of receiving the call, PO Breville drove to East 108<sup>th</sup> Street and Farragut Road, where they saw § 87(2)(b) and § 87(2)(b) standing close to each other, but not conversing. Sgt. Delman recalled that § 87(2)(b) and § 87(2)(b) matched the descriptions provided by the observation team. § 87(2)(b) and § 87(2)(b) were the only two individuals Sgt. Delman recalled seeing on the street. Sgt. Delman did not recall which individual he stopped first, and did not recall speaking with § 87(2)(b) but had more recollection of his interaction with § 87(2)(b). Sgt. Delman and PO Breville were in uniform and identified themselves in order to stop the individuals. § 87(2)(b) was calm and cooperative. Sgt. Delman patted him down for weapons and because he suspected that § 87(2)(b) possessed narcotics, based on the radio transmission. The pat down began in the waist, and Sgt. Delman felt a hard object in § 87(2)(b)'s pocket. Sgt. Delman did not know what the object was when he felt it in the pocket, and suspected it was a weapon because weapons come in all shapes and forms. Sgt. Delman took the object out, and it turned out to be a box for a watch. While both Sgt. Delman and PO Breville stopped § 87(2)(b) and frisked him, it was only Sgt. Delman who reached into § 87(2)(b)'s pocket and took out the watch. PO Breville did not go into § 87(2)(b)'s pocket. Sgt. Delman did not recall explicitly directing PO Breville to stop and frisk § 87(2)(b) and § 87(2)(b). § 87(2)(b) asked why he was being stopped, and Sgt. Delman explained that officers believed that a drug transaction had occurred.

PO MacDonald and PO Breville arrived later, and stood back, and did not interact with § 87(2)(b).

No drugs or weapons were found on § 87(2)(b) and § 87(2)(b).

Sgt. Delman said that he interacted with § 87(2)(b) later in the evening about § 87(2)(b)'s watch, a matter that was resolved by IAB.

*PO Christopher Denny (see Enclosure 10)*

PO Christopher Denny was interviewed at the CCRB on July 14, 2009. PO Denny is a black male who is approximately § 87(2)(b) old, approximately 5'10" and 190 pounds.

On February 10, 2009, PO Denny worked from 3:00 PM to 11:35 PM, assigned to the SNEU team on the observation post with PO Goncalves, working in plainclothes in an unmarked Impala. PO Denny noted in his memo book at 7:00 PM that two males were stopped at East 108<sup>th</sup> and Farragut.

At approximately 7:00 PM on February 10, 2009, PO Denny and PO Goncalves were in the Impala at East 105<sup>th</sup> St and Farragut, looking through binoculars at East 108<sup>th</sup> St and Farragut, a known drug-dealing

corner where PO Denny had made numerous arrests. It was dark, with moderate visibility from the streetlight above the corner, but nothing obstructed his view of the corner. PO Denny observed a male, identified as § 87(2)(b) pacing back and forth on the corner of East 108<sup>th</sup> and Farragut. PO Denny did not recognize § 87(2)(b). § 87(2)(b) made several phone calls on his cell phone. A second individual, who remains unidentified, approached § 87(2)(b). They conversed and stood together for several minutes, while § 87(2)(b) made several more phone calls. It was too far away for PO Denny to hear the conversation or the phone calls. PO Denny said that his attention was drawn to § 87(2)(b) because people who pace back and forth and make repeated phone calls to try to meet up, at that corner, have been involved in drug dealing in the past, based on his experience.

A third individual, identified as § 87(2)(b) who PO Denny recognized because he had recently arrested him for selling drugs, chasing him on a rooftop, arrived at the corner. The presence of § 87(2)(b) a known drug dealer, further raised PO Denny's suspicion. Neither man put his hand in his pocket. § 87(2)(b) touched hands with § 87(2)(b) with their fists meeting and then briefly opening their hands to touch fingers. It was too far away to see whether or not money was exchanged or a sale was made. PO Denny explained that when he has seen people have made a hand-to-hand drug transaction in the past, they have kept the money in their clenched fists and only opened their hands momentarily to pass the money, and have not put their hands in their pocket beforehand. § 87(2)(b) and § 87(2)(b) walked in separate directions. PO Denny made a call over the radio directing the team to stop § 87(2)(b) and § 87(2)(b). He gave descriptions of the individuals, height, race, and clothing descriptions, and said it was a possible sale. He did not state the location because the team knew he was observing East 108<sup>th</sup> and Farragut. He did not say anything about the other individual, because he did not shake hands and was therefore not a suspect.

*PO Philogene Breville* (see **Enclosure 8**)

PO Breville filled out stop-and-frisk reports for § 87(2)(b) and § 87(2)(b). The report for § 87(2)(b) noted that he was stopped at East 108<sup>th</sup> Street and Farragut Road at 7:00 PM on February 10, 2009 on suspicion of criminal sale of marijuana after being observed for one minute. The circumstances leading to the stop were actions indicative of engaging in a drug transaction and proximity of suspected offense. He was frisked because he was suspected of engaging in a drug transaction, and he was searched for drugs. The report for § 87(2)(b) noted that he was stopped at East 108<sup>th</sup> Street and Farragut Road at 7:00 PM on February 10, 2009 on suspicion of criminal sale of marijuana after being observed for one minute. The circumstances leading to the stop were actions indicative of engaging in drug transaction, and that he was associating with persons known for their criminal activity. The basis for the frisk was the suspicion he had engaged in a hand-to-hand drug transaction. The basis for the search was a suspicious bulge - a hard object inside his jacket pocket.

PO Breville was interviewed at the CCRB on June 12, 2009. PO Breville is a 30-year-old black male, 5'9", 170 pounds.

On February 10, 2009, PO Breville worked from 4:00 PM to 12:00 AM. His partner was Sgt. Delman in the SNEU team. He was dressed in uniform, assigned to an unmarked motor vehicle. In his memo book, he noted at 7:00 PM he stopped two males at East 108<sup>th</sup> Street and Farragut, and at 7:05 PM he noted that he filled out a stop-and-frisk report, and also noted the radio run 13161.

PO Breville's account of the radio run from the observation team and the stops, frisks, and searches of § 87(2)(b) and § 87(2)(b) was consistent with Sgt. Delman's.

*PO Sydney Dellimore* (see **Enclosure 9**)

PO Sydney Dellimore was interviewed at the CCRB on June 25, 2009. PO Dellimore is a 34-year-old black male who is 5'8" and 170 pounds.

On February 10, 2009, PO Dellimore worked from 3:00 PM to 11:35 PM, assigned to SNEU on the apprehension team with PO McDonald. He was dressed in uniform, assigned to a marked motor vehicle. In

his memo book he noted at 7:00 PM that there were two males stopped at East 108<sup>th</sup> Street and Farragut, and at 7:05 PM a stop-and-frisk report was prepared.

PO Dellimore arrived at the scene after both § 87(2)(b) and § 87(2)(b) had been stopped, frisked, and searched.

### **Officers Not Interviewed**

§ 87(2)(g)

### **Communications Record**

Sprint 13161 from February 10, 2009 stated that a vertical patrol was conducted at East 108<sup>th</sup> Street and Farragut Road in Brooklyn and it was corrected to a non-crime at 8:32 PM (see **Enclosure 12**).

### **Police Documents**

The previous arrest of § 87(2)(b) (see **Enclosure 14**) occurred at 10:35 PM on § 87(2)(b). PO Christopher Denny was the arresting officer.

### **Criminal Conviction History**

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian CCRB History (see Enclosure 3)**

This was the first CCRB complaint filed by § 87(2)(b).

### **Substantiated Allegations that resulted in the Imposition of Discipline (see Enclosure 2)**

Sgt. Eric Delman has not had any CCRB allegations substantiated against him in his 10 years of tenure.

## **Conclusions and Recommendations**

### **Pleading of Allegations**

§ 87(2)(g)

### **Undisputed Facts**

It is undisputed that § 87(2)(b) and § 87(2)(b) encountered each other, shook hands and briefly conversed before walking away. It is undisputed that Sgt. Delman saw and felt the bulge in § 87(2)(b)'s pocket caused by the box of the watch, and entered § 87(2)(b)'s pockets to take out the box.

### **Disputed Facts**

§ 87(2)(g)

**Allegation A: Sgt. Eric Delman stopped § 87(2)(b)**

**Allegation B: Sgt. Eric Delman frisked § 87(2)(b)**

**Allegation C: Sgt. Eric Delman searched § 87(2)(b)**

§ 87(2)(g)

**Allegation D: Sgt. Eric Delman stopped § 87(2)(b)**

PO Denny observed § 87(2)(b) encounter § 87(2)(b) a known drug dealer who PO Denny had arrested § 87(2)(b) where PO Denny had previously made arrests. § 87(2)(b) acknowledged he shook hands with § 87(2)(b) and briefly conversed before they walked away from each other, behavior consistent with a drug transaction in PO Denny's experience. He also noted that § 87(2)(b) walked away from him very quickly.

§ 87(2)(g)

§ 87(2)(b) PO Denny made a radio call to Sgt. Delman describing § 87(2)(b) and § 87(2)(b) and stating that they had engaged in what appeared to be a drug sale, and Sgt. Delman immediately stopped both § 87(2)(b) and § 87(2)(b) the only two individuals matching the description, on the basis of that radio call. § 87(2)(g)

**Allegation E: Sgt. Eric Delman frisked § 87(2)(b)**

In order to legally frisk a suspect, the officer must have a reasonable suspicion that the suspect is armed, based upon "clear and articulable facts". (Kamins, 171) § 87(2)(b) had a noticeable and weighted bulge in his jacket pocket, caused by the watch in a box § 87(2)(g)

§ 87(2)(b) An officer can legally frisk a suspect when the officer has "radio communications of criminal activity" in addition to the observation of a bulge (Kamins, 183, see **Enclosure 1**). § 87(2)(g)

**Allegation F: Sgt. Eric Delman searched § 87(2)(b)**

Sgt. Delman searched § 87(2)(b)'s pocket after feeling the hard watch box during the frisk. § 87(2)(g)

§ 87(2)(b) An officer may legally reach into a pocket, if after a frisk he or she feels a hard object and cannot determine whether or not it is a weapon. (Kamins, 173-4, see **Enclosure 1**).

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: